



2. Survey information:

The site for construction consists of property presently owned by the Town. A copy of the survey is attached (see "Exhibit Seven"). The approximate area of the survey where the site is located is indicated.

3. Space Requirements and Conceptual Site Criteria:

The Town reserves the right to enlarge or decrease the size and scope of the project before the final design is approved.

4. Design and Construction Schedules:

The Town expects the design of the Project to be completed within ninety (90) days from the effective date of the Contract to be executed between the successful Offeror and the Town and that construction of the structure will be completed within eight (8) months from the date of the final acceptance of the design of the Project by the Commission.

5. Site Development Requirements, Provisions for Utilities, Storm Water Retention and Disposal, Parking Requirements:

- a. The buildings shall be subject to the plans and specifications as required by the Town, Palm Beach County and Seacoast Utility Authority. The Design-Build Contract will require the Design-Build Firm to obtain any and all required Town and Palm Beach County permits and authorizations for development and coordinate with the Town to obtain the State Department of Environmental Resource Permit.
- b. Water and sewer service is available. All Offerors shall be required to provide grease traps and oil separators in accordance with Seacoast Utility Authority requirements.
- c. Offeror shall be required to install restrooms for patrons of the restaurant which shall be incorporated into the design of the restaurant. The size, number of stalls, handicap accessibility and other details of layout and construction shall be in accordance with all applicable building codes and ordinances.

4. Other Information:

- a. The Town Commission has had several meetings at which preliminary concepts for the use were addressed, and the Office of Town Clerk has minutes of the meetings during which the concepts were reviewed. For a

copy of meeting minutes, please contact Carol Simpkins, Town Clerk, at 561-881-3311.

- b. For written information on prior Lake Park Department of Community Development review, permits and permitted plans, contact Jamie Gentile, Calvin Giordano & Associates, Inc. on behalf of the Town of Lake Park Community Development Department at 561-881-3318.
- c. The successful Design-Build Offeror shall be responsible for providing all operation and maintenance manuals. In addition, the successful Offeror shall provide a minimum manufacture warranty of twenty-five (25) years for the roof, ten (10) year warranties for any and all structural work, seven (7) year warranties for the carpet and tile, if any proposed, and one (1) year warranties for any and all equipment.

V. TERMS AND CONDITIONS GOVERNING THE RFP

- 1. Rights and Responsibilities of Town of Lake Park:
 - a. The Town reserves the right to reject any or all Proposals. The Town also reserves the right in its sole discretion to waive minor errors or irregularities in the Proposals or in the Proposal solicitation procedures, or submissions. The Town additionally reserves the right to negotiate a change in the planned scope of services so as to increase or decrease same and to award a Contract to the Offeror which is not selected as the top candidate by the Town if it is advantageous to the Town to do so. THE TOWN SHALL NOT BE CONTRACTUALLY OR OTHERWISE BOUND TO ANY DESIGN-BUILD OFFEROR UNTIL A CONTRACT HAS BEEN FULLY EXECUTED BY BOTH THE TOWN AND THE SUCCESSFUL OFFEROR.
 - b. The Town reserves the right to reject the Proposal of any Design-Build Offeror if the Town believes that it would not be in the best interest of the Town to accept the offer, whether the Proposal is not responsive, or the Design-Build Offeror is unqualified, or is of doubtful financial ability in the sole opinion of Town, or fails to meet any other pertinent standard or criteria or criterion established by the Town, or for no reason at all. The Town reserves the right to request clarification of information submitted and to request additional information of one or more Design-Build Offerors.
 - c. All Offerors are advised that the Town, during any fiscal year, cannot expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts

budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such Contract. Nothing prevents the Town from making contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.

2. Design-Build Firm's Rights and Responsibilities for RFP Submittal:

- a. Proposals may be modified or withdrawn by an appropriate document duly executed and delivered to the place where Proposals are to be submitted up until the date and time set as the deadline for submitting Proposals as set forth in this Request for Proposals. A request for withdrawal or a modification must be submitted in writing and must contain the manual signature of the individual duly authorized to execute the proposal as a representative of the Offeror. Evidence of such authority must accompany the request for withdrawal or modification. Withdrawal of a Proposal will not prejudice the rights of a Design-Build Offeror to submit a new Proposal prior to the submittal deadline set forth in this Request for Proposals. No Proposal may be withdrawn or modified after the submittal deadline set forth in this Request for Proposals has passed.
- b. If following the pre-submission meeting a Firm elects to not submit a proposal under this RFP, the Town requests that the Firm return all forms with the statement "UNABLE TO SUBMIT A PROPOSAL", stating the reason(s) and, at the Firm's option, requesting that the Firm's name be retained on the Town's mailing list.
- c. The successful Offeror shall provide, pay for, and maintain in force at all times during the Project, such insurance, including Worker's Compensation, Employer's Liability Insurance, Comprehensive General Liability Insurance and Business Automobile Liability insurance, and will assure to the Town the projection contained in the foregoing indemnification and save harmless clauses undertaken by Offeror. The Comprehensive General Liability and Business Automobile Liability policies shall clearly identify the foregoing indemnification and save harmless clauses by the additional named insured endorsement under this article.

Such policy or policies shall be issued by an insurance company authorized to do business in the State of Florida and be written by a resident agent licensed by The State of Florida. Offeror shall specifically protect the Town of Lake Park by naming the Town of Lake Park as an additional named insured under the Comprehensive General Liability Insurance and Business Automobile Liability policies hereinafter

described. A current Certificate of Insurance meeting these requirements shall be evidence of the required coverage.

Workers' Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable Federal laws. In addition, the policy(ies) must include Employers' Liability with limits of One Hundred Thousand Dollars (\$100,000.00) Each Accident, Five Hundred Thousand Dollars (\$500,000.00) Each Disease, and One Hundred Thousand Dollars (\$100,000.00) Aggregate by Disease.

Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence single limit for Bodily Injury Liability and Property Damage Liability. The policy shall not contain an exclusion for explosion, collapse, or underground (X, C, U) hazards. All policies shall be written on an occurrence basis where available. The required limits may be met by the issuance of an excess or umbrella coverage policy so long as the Town of Lake Park is named as an additional named insured on such policies. Coverage shall include:

- (1) Premises/Operations Liability on an occurrence basis (if applicable) for operating a restaurant only.
- (2) Independent contractors.
- (3) Product and Completed Operations Liability on an occurrence basis.
- (4) Broad Form Property Damage.
- (5) Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
- (6) Personal Injury Coverage with Employees and Contractual Exclusions removed and with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

- Owned vehicles
- Non-owned and hired vehicles

Notice of Cancellation, Expiration and/or Restriction: The policies must be endorsed to provide the Town with thirty (30) days advance written notice of cancellation, expiration, and/or restriction of coverage.

Offeror shall furnish to the Town's Director of the Department of Public Works, current Certificate(s) of Insurance evidencing the insurance coverage's required herein prior to final award by the Town Commission. Such certificate(s) shall reference this Contract. The certificate holder shall be name as the Town of Lake Park, Attention Director of the Department of Public Works, 535 Park Avenue, Lake Park, Florida 33403. The Town reserves the right to require a certified copy of such policies upon request. All certificates shall state that the Town shall be given thirty (30) days advance written notice of cancellation and/or expiration.

The official title of the Owner is "Town of Lake Park". This official title shall be used in all insurance, or other legal documentation. The Town of Lake Park is to be included as "Additional Named Insured" with respect to liability arising out of operations performed for the Town of Lake Park by or on behalf of Offeror or acts or omissions of Offeror in connection with such operation.

3. Request for Proposal Forms, Guidelines, Other Forms and Related Information:

- a. All sealed proposals shall be submitted to:

Office of the Town Clerk
Town of Lake Park
535 Park Avenue
Lake Park, Florida 33403

As set forth in this RFP.

- b. All interested persons are advised that, upon submission of a Proposal from a Design-Build Offeror, no representation, authorization, communication or understanding will be valid unless submitted to the Lake Park Town Manager, in writing, and answered by an authorized designee of the Lake Park Town Manager in writing. All requests for information requests must be sent to the Office of Town Clerk.
- c. The written Contract between the successful Design-Build Offeror and the Town shall include language to the effect that neither the Contract, nor

any portion of it, nor any other facet of the relationship between the parties will create or be deemed to create a partnership, joint venture, joint enterprise or any other agency relationship and, further, shall reflect the Town's intent that the legal relationship between the parties shall be that of a Town dealing with an independent contractor. The successful Design-Build Offeror shall notify the Town at any time if it does not meet the requirements of an independent contractor pursuant to Internal Revenue Service laws and regulations so that appropriate action may be taken.

- d. A statutory public construction bond in a penal sum equal to the face amount of the Contract shall also be required and the Design-Build Offeror shall record same.
- e. Each Design-Build Offeror shall complete a Non-Collusion Affidavit (copy attached as "Exhibit Eight") and shall submit the form with the RFP.
- f. If any Design-Build Offeror is in doubt as to the meaning of any of the Proposal Documents, or is of the opinion that the Request for Proposal and Design Criteria Package contains errors or contradictions or reflects any omission, or has any questions concerning same, the Design-Build Offeror shall submit a written request to the Town Manager for interpretation or clarification. Such request must reference the date of Proposal opening and title, and must be received by the Town Manager at least ten (10) calendar days before the formal opening of the Proposal as set forth in this Request for Proposals. Questions received less than ten (10) calendar days prior to the Proposal opening shall not be answered. Interpretations or clarifications in response to such questions will be issued in the form of written addenda sent by first class mail, mailed to all parties recorded by the Lake Park Town Clerk as having received the Proposal Documents. The Town may use certified mail, return receipt requested. The issuance of a written addendum shall be the only official method by which an interpretation or clarification will be made. No representation, authorization, communication or understanding can be created unless the foregoing procedures are followed.
- g. A person or affiliate as defined in 287.133, Florida Statutes, who or which has been placed on the Convicted Vendor List maintained by the Florida Department of Management Services following a conviction for a public entity crime, or who or which has been suspended or debarred by the Town's Finance Director pursuant to Chapter 2, Section 2-108 of the Code of Ordinances of the Town of Lake Park, may not submit a Proposal under this Request for Proposals or a bid on a Contract with the Town for the construction or repair of any public building or public work; may not submit a bid on a lease of real property with the Town; may not be awarded an

opportunity to perform work as a contractor, supplier, subcontractor, or consultant under a Contract with the Town, and may not transact business with the Town in an amount set forth in §287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

- h. No elected official, officer, agent or employee of the Town shall have a financial interest directly or indirectly in the proposed Contract or the compensation to be paid under it, and further, no Town employee who acts in the Town as a "purchasing agent" as defined by §112.312(20), Florida Statutes, nor any elected or appointed officer of the Town, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, may be a partner, officer, director or proprietor of a Design-Build Offeror responding to this Request for Proposals and, further, no such Town purchasing agent, employee or elected or appointed officer, or the spouse or child of any of them, alone or in combination, may have a material interest in a Design-Build Offeror responding to this RFP. Material interest means direct or indirect ownership of more than five (5) percent of the total assets or capital stock of the Design-Build Offeror.

VI. MISCELLANEOUS CONTRACT TERMS

In addition to items specified above, the Contract will contain the following terms:

1. The Town may terminate the Contract to be executed between the successful Offeror and the Town if the Offeror has been found to have failed to provide the service in a "satisfactory manner". A "satisfactory manner" includes, but is not limited to: Failure to supply exact services specified within the required service periods; providing sub-standard services, and/or the inability to maintain proposal prices for the term of the Contract. The Town may further terminate the Contract to be executed between the successful Offeror and the Town if the Offeror fails to comply with any other provisions of the Contract. In such cases, the Contract shall be terminated in the following manner: The Offeror will be notified, in writing, of the nature of its failure to perform and the time certain for correcting the failure will be specified. Unless the failure is corrected, the Offeror shall be found in default and the Contract shall be subject to immediate termination. Termination shall be effected by serving notice of termination on the Offeror setting forth the manner in which the Offeror is in default. The Offeror will only be paid the Contract price for service provided and accepted in accordance with the specifications, terms and conditions set forth in the Contract.

In the event that the successful Offeror violates any provisions of the Contract, the Town may serve written notice upon such Offeror of its intention to terminate the Contract. The liability of the Offeror for any and all such violation(s) shall not be affected by any such termination and its surety, if any, shall be forfeited.

2. The Town will be authorized to terminate the Agreement with or without cause by giving sixty (60) days advance written notice of termination. A transition provision will be included in the event of termination to allow for a coordinated effort with the new contracted party.
3. The Town expects the Design-Build Offeror to fully comply with all federal, state, and Town laws applicable to the Project work and, specifically, those laws covering Equal Opportunity Employment, the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, et seq. and the Florida Building Code. The Town reserves the right to confirm compliance by an Offeror with the various laws. Failure to comply with any laws will be grounds for termination of the Contract.
4. Payment for services performed for the Design-Build aspects of performance will be made on a monthly basis upon approval of the Application for Payment by the designated official of the Town. The Contract will include phases of performance to be negotiated. There will be separate phases for design responsibilities and for construction responsibilities. Ten (10) percent retainage will be withheld on all payments until Town acceptance of the Project and the Town has received evidence of satisfactory completion of the Contract. Any proposal for operation of the restaurant will be negotiated and embodied in a separate contract prepared by the Lake Park Town attorney and approved by the Town Commission.
5. The successful Design-Build Offeror shall be responsible for payment of all costs, taxes, licenses, permits, etc. required to perform the Contract services and as specified in the Contract unless specifically outlined otherwise in this RFP. Without limiting the foregoing, Offeror shall pay all fees, costs and expenses in connection with the applications, processing and securing of approvals or permits from all governmental authorities which have jurisdiction over all aspects of this work except Town of Lake Park permits and fees which shall be waived (except for so much of such fees as the Town is required to remit to other governmental agencies).
6. The Proposal Price shall include all professional design fees, permit fees, royalties, license fees, taxes and other costs arising from the use of the design, equipment, and materials in any way involved in the work as well as all costs of packaging, transporting and delivery of any equipment and materials to the designated location within the Town, and the Site's cleanup – all as provided in the Design-Build Contract on file with the Town Clerk.

7. Prices shall be shown in both unit amounts and extensions whenever applicable. In the event of discrepancies between unit amounts and extensions or totals, unit amounts shall govern.
8. The successful Design-Build Offeror shall not sell, assign or transfer any interest in the Contract without prior written consent of the Town Commission.
9. The Town and the successful Design-Build Offeror each hereby recognize that time is of the essence as to completion and that the Town will suffer financial and other losses if the Project work is not completed within the specified time, plus extensions which may be allowed. Accordingly, the Town will require liquidated damages for any delay to be paid by the Design-Build Offeror to the Town at the rate of Five Hundred and no/100ths (\$500.00) Dollars each calendar day that expires after the specified time for Substantial Completion (adjusted for any extensions made in accordance with the Contract) until the work has obtained final completion.
10. It is anticipated that the costs associated with the provision of water, sewer and electrical service shall be borne by the restaurant operator, once the building receives a Certificate of Occupancy and is ready for business.
11. In the event of any litigation which arises out of, pertains to, or relates to the Contract, or the breach of it, or the standard of performance required in it, the prevailing party shall be entitled to recover a reasonable attorney's fee from the non-prevailing party, subject to the limits of this paragraph. Where the prevailing party is awarded compensatory damages from the non-prevailing party, the amount of attorney's fees shall not exceed the amount of compensatory damages (it being the intent that no attorney's fee shall be recoverable by a prevailing party in the absence of an award of compensatory damages). If no compensatory damages are awarded, the prevailing party is entitled to a reasonable attorney's fee, which shall not exceed the amount of the Contract as adjusted by change orders as are approved by the parties.
12. The Contract to be executed between the successful Offeror and the Town shall be governed by the laws of the State of Florida as they are now and hereinafter in force. Jurisdiction and venue of any litigation arising out of the Contract shall be exclusively in Palm Beach County, Florida. In the event of litigation to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorney's fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.
13. All Proposals received from Design-Build Offerors in response to this Request for Proposals shall become the property of the Town and shall not be returned to the Design-Build Offeror. In the event of a Contract award, all documentation

produced as a part of the Contract shall become the exclusive property of the Town. Responses to this RFP upon receipt by the Town shall become "public records" subject to the provisions of Chapter 119 F.S., the Florida Public Records Law.

13. The Offeror shall indemnify and hold harmless the Town, its engineer, the engineer's consultants, and the officers, directors, employees, agents and other consultants of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all Court or other dispute resolution costs), liabilities, expenditures, or causes of action of any kind (including negligent, reckless, or willful or intentional acts or omissions of the Offeror, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any work or anyone for whose acts any of them may be liable), arising from, relative to, or caused by the performance of the work. This indemnity includes but is not limited to, claims attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property, including the work itself, and including the loss of use resulting therefrom. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by Offeror from the Town that such amount is due, be made by Offeror prior to the Town being required to pay same, or in the alternative, the Town, at the Town's option, may make payment of an amount so due and Offeror shall promptly reimburse the Town for same, together with interest thereon at the rate of 12 percent per annum simple interest from the date of receipt by Offeror of written notice from the Town that such payment is due. Offeror agrees, at Offeror's expense, after written notice from the Town, to defend any action against the Town that falls within the scope of this indemnity, or the Town; at the Town's option, may elect not to tender such defense and may elect instead to secure its own attorney to defend any such action and the reasonable costs and expenses of such attorney incurred in defending such action shall be payable by Offeror. Additionally, if Offeror, after receipt of written notice from the Town, fails to make any payment due hereunder to the Town, Offeror shall pay any reasonable attorney's fees or costs incurred by the Town in securing any such payment from Offeror.
14. Offeror agrees to indemnify, defend, save and hold harmless the Town, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against Town, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

VII. OTHER CONTRACT REQUIREMENTS

The Design-Build Offeror selected will enter into a Design-Build Contract with the Town that will also contain various provisions including, but not limited to, the following:

1. Scope of services as defined within this RFP;
2. Key personnel provision; and
3. *The terms and conditions as outlined in this RFP.*

STATE OF FLORIDA
COUNTY OF

I CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared _____, as _____ of _____, a Florida _____, who is personally known to me (or who produced _____ as identification), who executed the foregoing instrument and acknowledged before me that such person executed the same, and who did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid on _____, 2004.

Notary Public, State of Florida

*Print, Type or Stamp Commissioned
Name of Notary Public and Affix Seal:*

**LIST OF EXHIBITS TO
TOWN OF LAKE PARK, FLORIDA
REQUEST FOR PROPOSALS FOR
DESIGN-BUILD OR DESIGN-BUILD AND OPERATE
SERVICES OF A RESTAURANT FOR AN
EXISTING MUNICIPAL MARINA**

- | | |
|----------------|---|
| Exhibit One: | Site Location Map |
| Exhibit Two: | Internal Revenue Service Revenue Procedure 97-13 |
| Exhibit Three: | Sketch of Dimensions |
| Exhibit Four: | SRX License Requirements |
| Exhibit Five: | Description of Items Needed to Complete the State of
Florida Department of Environmental Resources Permit
Application |
| Exhibit Six: | Legal Description of Site and Affected Area |
| Exhibit Seven: | Property Survey |
| Exhibit Eight: | Non-Collusion Affidavit |

SUMMARY OF DOCUMENTS WHICH MUST BE SUBMITTED BY OFFEROR WITH PROPOSAL

1. Proposal and Offeror's Certification
2. Non-Collusion Affidavit
3. Public Entity Crimes Form
4. Certified Resolution or Other Documentation Evidencing Authority to Sign the Proposal, Contract and Other Documents which Bind the Offeror
5. Qualifications Statement and References
6. Offeror's Corporate Statement
7. Certificates of Insurance
8. Anti-Kickback Affidavit
9. Drug Free Workplace
10. Certification of Non-Segregated Facilities

NON-COLLUSION AFFIDAVIT

State of Florida
County of Palm Beach

BEFORE ME, the undersigned authority, personally appeared, who, after being by me first duly sworn, deposes and says of his/her personal knowledge that:

- (1) He/she is of, the Offeror that has submitted a proposal to perform work for the following:

Request for Proposal Number: _____

Proposal Name: _____

- (2) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- (3) Such Proposal bid is genuine and is not a collusive or sham Proposal;
- (4) Neither the said Offeror nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Offeror, firm or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Offeror, firm or person to fix the price or prices in the attached Proposal or of any other Offeror, or to fix any overhead, profit or cost element of the Proposal price or the Proposal price of any other Offeror, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Town of Lake Park or any person interested in the proposed Contract: and
- (5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Offeror or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature

Subscribed and sworn to (or affirmed) before me this day of _____
By _____, who is personally known to me or who has produced

_____ as identification.

Signature of Notary

SEAL:

My Commission No.: _____

Expires on: _____